

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION

LAS VIRGENES MUNICIPAL WATER
DISTRICT-TRIUNFO SANITATION
DISTRICT,

Plaintiff,

v.

GINA McCARTHY, Administrator of
the U.S. ENVIRONMENTAL
PROTECTION AGENCY, and DOES
1-10, inclusive,

Defendants,

LOS ANGELES WATERKEEPER,
HEAL THE BAY, and NATURAL
RESOURCES DEFENSE COUNCIL,

Intervenors.

Case No: C 14-1392 SBA

**ORDER DENYING MOTION
TO CONTINUE SCHEDULE
FOR DISCOVERY MOTION**

Docket 55

The parties are presently before the Court on Plaintiff Las Virgenes Municipal Water District-Trifunfo Sanitation District's ("Plaintiff") administrative motion to continue schedule for discovery motion. Defendant Gina McCarthy, Administrator of the United States Environmental Protection Agency ("Defendant"), opposes the motion. Having read and considered the papers filed in connection with this matter and being fully informed, the Court hereby DENIES Plaintiff's motion, for the reasons stated below.

I. DISCUSSION

Plaintiff owns and operates the Tapia Wastewater Reclamation Facility ("the Facility"). The Facility discharges highly treated effluent into Malibu Creek under a National Pollution Discharge Elimination System ("NPDES") permit issued by the Los

1 Angeles Regional Water Quality Control Board. In July 2013, the EPA issued a “Malibu
2 Creek and Lagoon TMDL [i.e., Total Maximum Daily Load] for Sedimentation and
3 Nutrients to Address Benthic Community Impairments” (“2013 TMDL”). According to
4 Plaintiff, the 2013 TMDL will be incorporated into the next NPDES permit for the Facility,
5 which will require Plaintiff to incur significant costs for modification of the Facility and for
6 operations.

7 On September 9, 2013, Plaintiff commenced the instant declaratory judgment action,
8 alleging that the 2013 TMDL is invalid under the Clean Water Act. Among other things,
9 Plaintiff asserts that the 2013 TMDL is invalid because the EPA lacked jurisdiction to
10 promulgate the 2013 TMDL, and because the EPA violated Plaintiff’s procedural due
11 process rights and did not create a proper record for the 2013 TMDL. While it is
12 undisputed that the instant action is an administrative record case, the parties dispute
13 whether discovery is appropriate. In the parties’ Joint Case Management Conference
14 Statement filed in anticipation of the June 26, 2014 Case Management Conference, Plaintiff
15 represented that it intends to file a discovery motion after Defendant produces the
16 administrative record. On June 26, 2014, the Court issued an Order stating that “[g]iven the
17 dispute regarding whether discovery is necessary or appropriate in this action and the
18 anticipated motion practice, coupled with the fact that no actual dates have been proposed
19 by the parties, the Court finds that, in the interests of judicial economy and conserving the
20 parties’ resources, a brief continuance of the presently-scheduled Case Management
21 Conference is appropriate.” The Court continued the Case Management Conference to
22 October 1, 2014, and directed Plaintiff to file a discovery motion by no later than August
23 26, 2014.

24 On August 8, 2014, Defendant produced a draft of the administrative record. On
25 August 26, 2014, Plaintiff did not file a discovery motion. Instead, Plaintiff filed an
26 administrative motion, requesting an extension of time to file a discovery motion. In
27 support of its motion, Plaintiff asserts that it cannot determine whether it needs to file a
28 discovery motion until the final administrative record is produced and it has time to review

1 the record. In response, Defendant argues that Plaintiff's motion should be denied because
2 it is an improper administrative motion, Plaintiff failed to meet and confer prior to filing the
3 motion, and Plaintiff's stated reason for an extension of time is without merit.

4 As a threshold matter, Plaintiff concedes that it did not meet and confer prior to the
5 filing of the instant motion. On that basis alone, the Court finds that Plaintiff's motion is
6 subject to denial. See Raifman v. Wachovia Sec., LLC, 2013 WL 949255, at *2 (N.D. Cal.
7 2013) (Armstrong, J.) (denying motion without prejudice based on the movant's failure to
8 "meet and confer on the issues presented by the instant motion"). Plaintiff's motion also
9 fails to comport with the Civil Local Rules, which require a party requesting an
10 enlargement of time to alter a deadline established by the Court to file a written stipulation
11 pursuant to Civil L.R. 6-2 or motion pursuant to Civil L.R. 6-3. N.D. Cal. Civ. L.R. 6-1(b).

12 Even setting these deficiencies aside, the Court finds that Plaintiff has failed to
13 demonstrate that an extension of time to file a discovery motion is appropriate. Judicial
14 review of an agency's decision typically focuses on the administrative record in existence
15 at the time of the decision and does not encompass any part of the record that is made
16 initially in the reviewing court. Southwest Center for Biological Diversity v. U.S. Forest
17 Service, 100 F.3d 1443, 1450 (9th Cir. 1996). While there are narrow exceptions to this
18 general rule that allow a district court to admit extra-record evidence, see id.,¹ Plaintiff has
19 not shown that any of the exceptions apply. Plaintiff's motion does not identify any
20 "holes" in the administrative record that can be "plugged" through discovery. See Council
21 v. Powell, 395 F.3d 1019, 1030 (9th Cir. 2005) (The limited exceptions to the general rule
22 that courts reviewing an agency decision are limited to the administrative record operate to
23 identify and plug holes in the administrative record. Though widely accepted, these
24 exceptions are narrowly construed and applied.). Further, Plaintiff failed to articulate a

25 _____
26 ¹ In limited circumstances, district courts are permitted to admit extra-record
27 evidence: (1) if admission is necessary to determine "whether the agency has considered all
28 relevant factors and has explained its decision," (2) if "the agency has relied on documents
not in the record," (3) "when supplementing the record is necessary to explain technical
terms or complex subject matter," or (4) "when plaintiffs make a showing of agency bad
faith." Southwest Center, 100 F.3d at 1450 (internal citation and quotation marks omitted).

1 basis for why discovery is appropriate in the parties' September 24, 2014 Joint Case
2 Management Conference Statement or during the October 1, 2014 Case Management
3 Conference. Plaintiff failed to do so despite having ample time to review the final
4 administrative record, which was filed on August 27, 2014.

5 In light of the foregoing, Plaintiff's administrative motion to continue schedule for
6 discovery is DENIED. Plaintiff has not demonstrated that an extension of time to file a
7 discovery motion is warranted. There has been no showing that discovery in this
8 administrative record case is appropriate. To the extent Plaintiff believes that it is entitled
9 to conduct discovery, the parties shall meet and confer to determine whether there is, in
10 fact, a controversy - or whether there is another mutually agreeable course of action that
11 will address Plaintiff's concerns without the need for judicial intervention. See Raifman,
12 2013 WL 949255, at *1 (" 'The purpose of the [meet and confer] requirement is to . . .
13 resolve disputes which need not involve the Court, and avoid unnecessary litigation, thus
14 saving the parties', the Court's, and the taxpayers' limited time, money, and resources.' ").
15 In the event the parties cannot resolve their discovery dispute, they shall file a joint letter
16 brief, not to exceed ten (10) pages, setting forth their respective positions.

17 **II. CONCLUSION**


18 For the reasons stated above, IT IS HEREBY ORDERED THAT:

19 1. Plaintiff's administrative motion to continue schedule for discovery is
20 DENIED. If the parties' discovery dispute is not resolved through the meet and confer
21 process, the parties shall file a joint brief as described above by no later than fourteen (14)
22 days from the date this Order is filed.

23 2. This Order terminates Docket 55.

24 IT IS SO ORDERED.

25 Dated: October 14, 2014

26 
27 SAUNDRA BROWN ARMSTRONG
28 United States District Judge